

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SUPERIOR COURT
BARNSTABLE, SS

FILED JUL 19 2019

Robert H. Hatten Clerk

CYNTHIA HATT,

Plaintiff,

v.

TOWN OF OAK BLUFFS and OAK
BLUFFS BOARD OF SELECTMAN

Defendant.

Civil Action No.

19CV10375

COMPLAINT

Background

1. Defendants Town of Oak Bluffs and the Oak Bluffs Board of Selectman (collectively, "Defendants") violated M.G.L. c. 149 §§ 148 and 150 and M.G.L. c. 151 §§1A and 1B by failing to pay Plaintiff Cynthia Hatt ("Hatt") one and one-half times her regular rate of pay for all hours worked in excess of forty per week.
2. As set forth below, Defendants permitted, expected, encouraged and/or instructed Ms. Hatt to work more than forty hours per work week. Ms. Hatt was not exempt from the Massachusetts overtime laws and Defendants were therefore required to pay her one and one-half times her regular hourly rate for hours worked in excess of forty hours per week. Defendants did not pay Ms. Hatt one and one half times her regular hourly rate for hours worked in excess of forty in a week, in violation of Massachusetts law. Ms. Hatt seeks to recover those unpaid overtime wages, treble damages, attorneys' fees and costs and all other relief permitted by law.

Parties

3. Plaintiff Cynthia Hatt ("Hatt") is a resident of Sagamore Beach, Massachusetts. Between in or around 2013 and April 9, 2019, Ms. Hatt was employed by Defendants as the Office Administrator for the Town of Oak Bluffs' Fire Department.

4. Defendant Town of Oak Bluffs (the "Town") is a body corporate located in Dukes County, Massachusetts, duly organized under and by virtue of the laws and statutes of the Commonwealth of Massachusetts and able to be sued under M.G.L. c. 40 § 2.

5. Defendant Oak Bluffs Board of Selectmen (the "Board") comprises the chief elected officials of the Town. According to the Town's website, the Board's duties and responsibilities include, *inter alia*, "[a]ppointing authority ... for employees of [the Town's] Departments."

Jurisdiction and Venue

6. This Court has original jurisdiction over this action, as it is a civil action where Ms. Hatt has a reasonable likelihood to recover over \$25,000.

7. This Court has personal jurisdiction over Defendants, pursuant to M.G.L. c. 223A § 2 because they are organized under the laws of and maintain their principal places of business in the Commonwealth.

8. Venue is proper in this court, pursuant to M.G.L. c. 223 § 1, because Ms. Hatt resides within this county.

9. In compliance with M.G.L. c. 149, § 150, a Non-Payment of Wage and Workplace Complaint Form was filed for Ms. Hatt with the Massachusetts Office of the Attorney General prior to initiating this action.

Factual Allegations

10. The Town operates a Fire Department. The stated mission of the Fire Department is "to provide 24/7 emergency services to the citizens of Oak Bluffs, and to our larger island community through mutual aid."

11. Defendants employed Ms. Hatt as the Office Administrator for the Town's Fire Department from in or about 2013 until April 9, 2019.

12. Defendants paid Ms. Hatt an hourly rate of \$27.44, plus benefits.

13. Ms. Hatt's primary duties for Defendants included, but were not limited to: processing Fire Department payroll; managing Fire Department accounts receivable and serving as the assistant to the Fire Department's Chief. Ms. Hatt's duties as the Fire Department's Chief included, *inter alia*, managing the Chief's calendar, writing materials at the Chief's direction and assisting the Chief with the budget by gathering numbers and performing calculations at his direction.

14. Ms. Hatt's duties did not, at any time, include the exercise of discretion or independent judgment with respect to matters of significance for Defendants.

15. Ms. Hatt was a nonexempt employee.

16. In fact, Defendants apparently recognized Ms. Hatt was a non-exempt employee. Indeed, from 2013 until 2017, Defendants offered Ms. Hatt "comp time" for hours she worked in excess of forty in a given week from 2013-2017.

17. Defendants took Ms. Hatt's "comp time" away in 2017 after she rejected sexual advances from the Defendants' Fire Department Chief. (This and related allegations are the subject of a claim for sexual harassment/discrimination currently pending with the Massachusetts Commission Against Discrimination.)

18. Defendants did not keep accurate records of Ms. Hatt's hours worked.

19. Ms. Hatt worked more than forty (40) hours per week every month she was employed by Defendants. For example, Ms. Hatt was asked to document Fire Department drills, training and company meetings outside her regularly-scheduled hours – primarily on nights and weekends. Ms. Hatt also would work evenings or weekends to serve as a note taker during disciplinary meetings and hiring, which often occurred outside of ordinary business hours in order to accommodate the Assistant Chiefs of the Fire Department who both had full time jobs elsewhere.

20. Defendants did not pay Ms. Hatt overtime wages at the rate of one and one-half times her regular rate for each hour she worked in excess of forty hours in a given work week at any time during her employment.

21. In sum, Defendants permitted, expected, encouraged and/or instructed Ms. Hatt to work in excess of forty hours per week without overtime compensation.

Count I – Massachusetts Overtime Law Claim

22. Ms. Hatt re-alleges and incorporates paragraphs 1 through 21 above as if fully set forth herein.

23. Ms. Hatt was not an exempt employee under M.G.L. c. 151 §§ 1A and 1B.

24. Ms. Hatt regularly worked in excess of forty hours per week during her employment for Defendants.

25. Defendants did not pay Ms. Hatt overtime wages at the rate of one and one-half times her regular rate for hours worked in excess of forty hours per week.

26. Defendants' failure to pay Ms. Hatt one and one-half times her regular rate of pay for hours worked in excess of forty during each work week violated M.G.L. c. 151 §§ 1A and 1B.

27. As a direct and proximate result of Defendants' unlawful conduct, Ms. Hatt has sustained damages, including the loss of earnings for hours of overtime worked, the exact amount of which are to be proven at trial.

28. Pursuant to M.G.L. c. 151 §§ 1A and 1B, Defendants are liable to Ms. Hatt for treble damages, prejudgment interest, plus costs and reasonable attorneys' fees.

COUNT II
VIOLATIONS OF M.G.L. c. 149 §§ 148, 150

29. Ms. Hatt incorporates paragraphs 1 through 28 above as if fully set forth herein.

30. Pursuant to M.G.L. c. 149 § 148, the Defendants were required to pay Ms. Hatt all wages due and payable to her within six days from the end of the pay period in which Ms. Hatt earned the wages.

31. As detailed above, the Defendants never paid Ms. Hatt an hourly rate equal to one and one half times her regular hourly rate for any of the hours that she worked in excess of forty in a given week.

32. The Defendant's failure to pay Ms. Hatt an hourly rate equal to one and one half times her regular rate for each hour that she worked in excess of forty in a given week such wages were due and payable violated M.G.L. c. 149 § 148.

33. As a direct result of Defendants' violations of M.G.L. c. 149 §§ 148 and 150, Ms. Hatt has lost wages and suffered damages in amount to be proven at trial, including treble damages, statutorily prescribed interest, costs, and, attorneys' fees.

Prayer for Relief

WHEREFORE, Ms. Hatt respectfully requests that the Court:

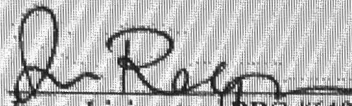
- A. Enter judgment in favor of Ms. Hatt and against Defendants on all counts;
- B. Under Counts I and II, determine the damages sustained by Ms. Hatt result of Defendants' violations of M.G.L. c. 149 §§ 148 and 150 and M.G.L. c. 151 §§ 1A and 1B, and award against Defendants and in favor of Ms. Hatt: (i) treble damages; (ii) such interest as may be allowed by law; and (iii) the cost of this litigation and reasonable attorneys' fees.
- C. Award Ms. Hatt her costs and disbursements of this suit, including, without limitation, reasonable attorneys', accountants' and experts' fees and such interest as may be allowed by law;
- D. Award Ms. Hatt post-judgment interest on all amounts awarded at the highest rate allowable by law; and
- E. Award any other relief deemed just and appropriate by the Court.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,

PLAINTIFF CYNTHIA HATT,

By her attorneys,



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Dated: July 16 2019

CIVIL ACTION COVER SHEET		DOCKET NUMBER 19CV0375	Trial Court of Massachusetts The Superior Court
PLAINTIFF(S): <u>Cynthia Hart</u>		COUNTY: <u>Barnstable</u>	
ADDRESS: _____		DEFENDANT(S): <u>Town of Oak Bluffs and</u>	
		<u>Oak Bluffs Board of</u>	
ATTORNEY: <u>John Regan, Esq.</u>		Selectman	
ADDRESS: <u>The Employee Rights Group</u>		56 School St.	
<u>185 Devonshire St. Ste 200</u>		<u>Oak Bluffs, MA 02557</u>	
<u>Boston MA 02110</u>			
SSO: _____			
CODE NO. <u>B99</u>	TYPE OF ACTION (specify) <u>failure to pay wage / OT</u>	TRACK <u>E</u>	HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
If "Other" please describe: _____			
Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input type="checkbox"/> NO		Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input type="checkbox"/> NO	
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A			
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.			
TORT CLAIMS (attach additional sheets as necessary)			
A. Documented medical expenses to date:		<div style="border: 1px solid black; padding: 5px; display: inline-block;">SUPERIOR COURT BARNSTABLE FILED JUL 19 2019</div>	
1. Total hospital expenses			
2. Total doctor expenses			
3. Total chiropractic expenses			
4. Total physical therapy expenses			
5. Total other expenses (describe below)		Subtotal (A): \$ _____	
B. Documented lost wages and compensation to date		\$ _____	
C. Documented property damages to date		\$ _____	
D. Reasonably anticipated future medical and hospital expenses		\$ _____	
E. Reasonably anticipated lost wages		\$ _____	
F. Other documented items of damages (describe below)		\$ _____	
G. Briefly describe plaintiff's injury, including the nature and extent of injury:			
TOTAL (A-F): \$ _____			
CONTRACT CLAIMS (attach additional sheets as necessary)			
<input checked="" type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement, Mass. R. Civ. P. 8.1(a).			
Provide a detailed description of claim(s): <u>Failure to pay overtime</u>		TOTAL: \$ <u>25,000</u>	
Signature of Attorney/ Unrepresented Plaintiff: <u>J. Regan</u>		Date: <u>7/16/19</u>	
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.			
CERTIFICATION PURSUANT TO SJC RULE 1:18			
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.			
Signature of Attorney of Record: <u>X</u>		Date: _____	